IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6400 OF 2007

Shri Ravindranath J. Patil ...Petitioner

v/s

Maharashtra State Electricity Distribution Co.Ltd. and anr. ...Respondents

Mr Uday Warunjikar for Petitioner.

Ms A.R.S. Baxi for Respondent No.1.

CORAM : D.K. DESHMUKH AND V.M. KANADE JJ.

DATE : 11TH DECEMBER 2007.

P.C. :-

1. By this petition, the petitioner challenges the order of the respondent No.1 refusing to appoint the petitioner to the post of Vigilance Officer despite his selection for the post. The respondents have declined to appoint the petitioner to that post of Vigilance Officer though he has been selected for the same for two reasons - (1) that he was selected for the post in the year 2005, that selection list was in force for a period of one year and therefore, on the basis of that select list, appointment cannot be made now; and (2) though the select list was prepared for appointing candidates by direct recruitment, the petitioner was in-service candidate and he has been found guilty of misconduct and punishment of withholding increment has been imposed on the petitioner. So far as the first reason is concerned, we find that there is a provision in the service regulations which shows that in relation to the departmental candidates, the select list will remain in force for a period of one year. There is no direct provision in relation to select list prepared for direct recruits. However, the learned counsel appearing for respondent No.1 submitted that the same policy is followed by the respondents in relation to direct recruits. So far as the second reason given is

concerned, according to the learned counsel appearing for petitioner, because the advertisement did not mention that the conduct of the petitioner would be taken into consideration, the punishment imposed in the departmental enquiry could not have been considered. He also submits that when the decision not to appoint the petitioner was taken because of the punishment, his writ petition challenging the non-selection was pending. Now, so far as the first ground is concerned, in our opinion, inspite of absence of any clause in the advertisement that the conduct would be considered while making appointment, the employer would be entitled while appointing selected candidate to take into consideration conduct of that candidate if he happens to be in service-candidate. In our opinion, the employer would be justified in declining appointment to the selected if the employer finds that his conduct, which has not been considered by the Selection Committee, makes him unfit for the post. So far as the second ground that challenge to the punishment was pending is concerned, filing a writ petition challenging imposition of punishment is not a regular challenge to the punishment. In case the punishment is ultimately set aside, the petitioner can always seek for appropriate relief in relation to appointment from the Court which decides the petition, but on the date on which he respondents were considering the question of making appointment, the

order of punishment was very much in force, it was neither set aside nor suspended by any authority or Court and therefore, in our opinion, the respondents were justified in taking into consideration the order imposing punishment. We find no substance in the petition. It is rejected.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Private Secretary of the Court.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(V.M. KANADE J.)